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10/758,262	01/16/2004	Kevin Sullivan	JPC-011 D1	5705

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EXAMINER	
LIVERSEDGE, JENNIFER L	
ART UNIT	**PAPER NUMBER**
3684	

NOTIFICATION DATE	DELIVERY MODE
12/21/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/758,262	SULLIVAN, KEVIN	
	Examiner	Art Unit	
	JENNIFER LIVERSEDGE	3684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *37,40-45,47-50 and 54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *37,40-45,47-50 and 54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's amendment and request for reconsideration of Application 10/758,262 filed on September 24, 2009.

The amendment contains previously presented claims: 40-43, 45, 47-50, 54.

The amendment contains amended claims: 37, 44.

Claims 1-36, 38-39, 46 and 51-53 and 55 have been canceled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 37 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,070,153 to Simpson (further referred to as Simpson), in view of Ogilvie (further referred to as Ogilvie), in view of US Patent 6,345,261 B1 to Feidelson et al. (further referred to as Feidelson), and further in view of US Patent 5,940,811 to Norris (further referred to as Norris).

Regarding claim 37, Simpson discloses a computerized method for implementation of multiple accounts, wherein the multiple accounts include at least one card payment instrument account from a card issuer and at least one investment account from a financial institution (columns 1-6), the method comprising:

Providing a card and investment application to an applicant, the card and investment applications entitling an approved cardholder to establish a card payment instrument account with the card issuer and an investment account with the financial institution, wherein the card issuer and the financial institution are independent entities (column 2, lines 32-49; column 3, lines 21-26; column 3, line 50 – column 4, line 67; column 5, lines 60-63);

Approving a submitted card and investment application through an application processor system including one or more computer processors and maintained by the card issuer (column 3, line 55 - column 4, line 37);

Establishing the card payment instrument account through the application processor system maintained by the card issuer for the approved cardholder upon acceptance, wherein the card payment instrument account includes a reward feature

available to the cardholder (Figures 1 and 3; column 1, lines 10-25 and lines 45-63; column 2, lines 30-39; column 3, line 50-column 4, line 53; column 5, lines 25-28; column 6, lines 19-26);

Automatically creating the investment account for the approved cardholder through the financial institution (Figure 1; column 2, lines 30-39; column 3, line 50-column 4, line 53; column 6, lines 19-26);

Linking, using the application processor system, the card payment instrument account from the card issuer to the investment account from the financial institution in an account maintained by the card issuer (Figure 1; column 2, lines 30-41; column 4, lines 27-37; column 6, lines 19-27);

Issuing a card payment instrument linked to the multiple accounts (column 3, lines 50-60; column 4, lines 10-18);

Establishing a reward structure through an agreement between the financial institution and the card issuer (column 1, lines 46-63; column 2, lines 9-11; column 5, lines 25-30);

Implementing the reward feature, using a rewards processing system maintained by the card issuer, by tracking expenditures made through the card payment instrument account and calculating a monetary reward amount based on the tracked expenditures (Figure 3; column 1, lines 10-25 and lines 45-63; column 4, lines 45-53; column 5, lines 25-28);

Depositing the monetary reward amount generated by the rewards processing system into the investment account at a predetermined time interval using a reward issue and transfer system (Figure 3; column 1, lines 45-63); and

Allowing independent funding of the investment account by the cardholder (Figures 1 and 3; column 1, lines 54-67; column 2, lines 17-22; column 4, lines 13-19; column 4, line 63-column 5, line 5; column 5, lines 41-59).

Simpson does not disclose an investment fund card application enabling establishment of a card and an investment account. However, Ogilvie discloses where one application is used to both apply for and establish a credit card and an investment vehicle based on the card use, wherein a single application is filled out for both the credit card and for designating a reward selection (column 1, lines 56-67). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the simultaneous accepting of credit card and investment fund account applications for the establishment of linked accounts as disclosed by Simpson to adapt the use of a single form for both accounts as disclosed by Ogilvie. The motivation would be that both accounts are set up using an individual's personal data and information, and establishing both accounts based on this one-time receipt of data enables an efficient and less error prone mechanism for opening linked accounts.

Neither Simpson nor Ogilvie disclose wherein the issued card payment instrument bears the name of the financial institution and the name of the card issuer. However, Feidelson discloses wherein the issued card payment instrument bears the name of the financial institution and the name of the card issuer (column 14, lines 38-

42). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the use of a credit card wherein a reward feature is implemented through partnership with another organization using a single application as disclosed by Simpson and Ogilvie to adapt issuing a credit card that bears partnership organizations on the card as disclosed by Feidelson. The motivation would be that co-branding a credit card by including the names of participating organizations on the card, rather than just one organization in the partnership, builds customer use in using the card by providing visual queues as to the benefit of the using the card. When a user is preparing to pay for a purchase and opens their wallet and sees, for example, three credit cards, the credit card with a visual reminder that using that card will result in a deposit into one's investment account based on the purchase value will inspire the purchaser to select that card for the purchase over a card which offers no specific and tangible reward. Building loyalty and encouraging use is the motivation behind the use of co-branded credit cards.

Neither Simpson, Ogilvie nor Feidelson explicity disclose the creation of the investment account being triggered by notification from the card issuer to the financial institution. However, it would be obvious based on the disclosure of each of Simpson, Ogilvie and Feidelson that communication between the credit card issuer and the financial institution is occurring, as both the credit card issuer and the financial institution are party to the linked credit card and investment account. In Simpson, it is disclosed that the credit card accounts and investment accounts can be held and serviced by different entities (column 5, lines 60-64) and where the applicant

simultaneously is offered an application for a credit card and an automatic investment account (column 3, line 65 – column 4, line 5 and column 4, lines 13-18). Clearly, if the applicant is being offered opportunities to open linked accounts held and serviced by different entities, then the different entities must be in communication. Simpson's method provides for the opening of accounts based solely on the actions of the credit card issuer and investment account institution, not the individual consumer. Similarly, Feidelson discloses a registration form used to apply for an investment account and a credit card where the credit card is co-branded between the two parties (column 14, lines 38-42). Communication between the credit card issuer and investment account manager occur as part of the co-branding business arrangement. Feidelson specifically discloses the registration form includes the application for a credit card and where the administrator (manager of the investment fund) and credit card issuer have embarked on the joint business venture. In both instances, it is obvious that communication between the parties is occurring in order to create the link between investment accounts and credit card accounts. The references provide the context in which is it obvious that communication between the credit card issuer and investment account holder is occurring for the establishment of the accounts, without action being required of the consumer. The references also provide the context in which the application of known techniques would result in predictable results, namely, the communication between joined business venture partners for the offering of enhanced services for customers.

Neither Simpson, Ogilvie nor Feidelson disclose consulting a credit bureau database prior to approving the investment fund card application. However, Norris

discloses consulting a credit bureau database prior to approving a card application. Given the combination of Simpson, Ogilvie and Feidelson above, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the reviewing of an application for a linked credit and investment account as disclosed by the combination to adapt the obtaining of a credit report to make a determination to grant or deny the application as disclosed by Norris, the motivation being that it is considered standard business practice to perform a credit check on an individual or entity prior to issuing credit.

Regarding claim 40, Simpson discloses wherein the card payment instrument account includes at least one of a credit card account, a stored value card account, a debit card account, and a multi-featured credit on a debit card account (column 1, lines 21-25 and 45-53; column 2, lines 29-49).

Regarding claim 41, Simpson discloses wherein the investment account includes at least one of a mutual fund account, a stock account, an individual retirement account, a 401(k) plan account, a savings account, a certificate of deposit account, a money market fund, and an employee stock purchase account (column 1, lines 21-25 and 45-53).

Regarding claim 42, Simpson discloses calculating the monetary reward amount each month as a percentage of net purchases in the card payment instrument account

(column 1, lines 54-59; column 2, lines 50-66; column 4, lines 45-57; column 5, lines 25-30).

Regarding claim 43, Simpson discloses transferring the monetary reward amount to the investment account at least once a year (column 1, lines 54-59; column 2, lines 50-66; column 4, lines 45-57; column 5, lines 25-30).

Claims 44-45, 47-50 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,070,153 to Simpson (further referred to as Simpson), in view of Ogilvie (further referred to as Ogilvie), and further in view of US Patent 6,345,261 B1 to Feidelson et al. (further referred to as Feidelson).

Regarding claim 44, Simpson discloses a computerized method for establishing and implementing multiple accounts, wherein the multiple accounts include at least one card payment instrument account from a card issuer and at least one investment account from a financial institution (columns 1-6), the method comprising:

Simultaneously offering multiple accounts including the card payment instrument account through the card issuer and the investment account from the financial institution, wherein the card issuer and the financial institution are independent entities (column 2, lines 30-38; column 3, lines 21-22; column 3 line 50-column 4, line 53; column 5, lines 60-63column 6, lines 19-26);

When a recipient of an offer for multiple accounts accepts the offer for multiple accounts, establishing using an application processor system of a card issuer computing system, the card payment instrument account in response to the acceptance, wherein the card payment instrument account includes a reward feature available to the recipient (Figures 1 and 3; column 1, lines 10-25 and lines 45-63; column 2, lines 30-39; column 3, line 50-column 4, line 53; column 5, lines 25-28; column 6, lines 19-26);

Automatically creating the investment account after the acceptance of the offer for multiple accounts to create the investment account and upon establishment of the card payment instrument account by the application processor system (Figure 1; column 2, lines 30-39; column 3, line 50-column 4, line 53; column 6, lines 19-26);

Issuing a card payment instrument linked to the multiple accounts (column 3, lines 50-60; column 4, lines 10-18);

Establishing a reward structure through an agreement between the financial institution and the card issuer (column 1, lines 46-63; column 2, lines 9-11; column 5, lines 25-30);

Implementing the reward feature by tracking expenditures made through the card payment instrument account and calculating, using a reward processing system including at least one computer processor, a monetary reward amount based on the tracked expenditures (Figure 3; column 1, lines 10-25 and lines 45-63; column 4, lines 45-53; column 5, lines 25-28);

Transferring the monetary reward amount generated by the reward feature to the investment account at predetermined time intervals (Figure 3; column 1, lines 45-63).

Simpson does not disclose an investment fund card application enabling establishment of a card and an investment account. However, Ogilvie discloses where one application is used to both apply for and establish a credit card and an investment vehicle based on the card use, wherein a single application is filled out for both the credit card and for designating a reward selection (column 1, lines 56-67). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the simultaneous accepting of credit card and investment fund account applications for the establishment of linked accounts as disclosed by Simpson to adapt the use of a single form for both accounts as disclosed by Ogilvie. The motivation would be that both accounts are set up using an individual's personal data and information, and establishing both accounts based on this one-time receipt of data enables an efficient and less error prone mechanism for opening linked accounts.

Simpson does not disclose selecting, using a reward issue and transfer system operated by the card issuer, a transfer destination for the reward, wherein the transfer destination is selected from the established investment account and an alternative destination. However, Ogilvie discloses using a reward issue and transfer system operated by the card issuer, a transfer destination for the reward, wherein the transfer destination is selected from the established investment account and an alternative destination (column 3, lines 1-16 and lines 55-59). Given the combination of Simpson and Ogilvie above, it would be further obvious to modify the credit card and investment linked accounts as disclosed by Simpson to adapt the provision of more than one investment account into which a funds transfer may be designated. The motivation

would be to provide the reward earner greater flexibility in receiving rewards wherein the reward earner may stipulate certain awards into a savings account and certain awards into checking, etc.

Neither Simpson nor Ogilvie disclose wherein the issued card payment instrument bears the name of the financial institution and the name of the card issuer. However, Feidelson discloses wherein the issued card payment instrument bears the name of the financial institution and the name of the card issuer (column 14, lines 38-42). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the use of a credit card wherein a reward feature is implemented through partnership with another organization through a single application as disclosed by Simpson to adapt issuing a credit card that bears partnership organizations on the card as disclosed by Feidelson. The motivation would be that co-branding a credit card by including the names of participating organizations on the card, rather than just one organization in the partnership, builds customer use in using the card by providing visual queues as to the benefit of the using the card. When a user is preparing to pay for a purchase and opens their wallet and sees, for example, three credit cards, the credit card with a visual reminder that using that card will result in a deposit into one's investment account based on the purchase value will inspire the purchaser to select that card for the purchase over a card which offers no specific and tangible reward. Building loyalty and encouraging use is the motivation behind the use of co-branded credit cards.

Neither Simpson, Ogilvie nor Feidelson explicity disclose the creation of the investment account being triggered by notification from the card issuer to the financial

institution. However, it would be obvious based on the disclosure of each of Simpson, Ogilvie and Feidelson that communication between the credit card issuer and the financial institution is occurring, as both the credit card issuer and the financial institution are party to the linked credit card and investment account. In Simpson, it is disclosed that the credit card accounts and investment accounts can be held and serviced by different entities (column 5, lines 60-64) and where the applicant simultaneously is offered an application for a credit card and an automatic investment account (column 3, line 65 – column 4, line 5 and column 4, lines 13-18). Clearly, if the applicant is being offered opportunities to open linked accounts held and serviced by different entities, then the different entities must be in communication. Simpson's method provides for the opening of accounts based solely on the actions of the credit card issuer and investment account institution, not the individual consumer. Similarly, Feidelson discloses a registration form used to apply for an investment account and a credit card where the credit card is co-branded between the two parties (column 14, lines 38-42). Communication between the credit card issuer and investment account manager occur as part of the co-branding business arrangement. Feidelson specifically discloses the registration form includes the application for a credit card and where the administrator (manager of the investment fund) and credit card issuer have embarked on the joint business venture. In both instances, it is obvious that communication between the parties is occurring in order to create the link between investment accounts and credit card accounts. The references provide the context in which is it obvious that communication between the credit card issuer and investment account holder is

occurring for the establishment of the accounts, without action being required of the consumer. The references also provide the context in which the application of known techniques would result in predictable results, namely, the communication between joined business venture partners for the offering of enhanced services for customers.

Regarding claim 45, Simpson discloses allowing independent funding of the investment account by the cardholder (Figures 1 and 3; column 1, lines 54-67; column 2, lines 17-22; column 4, lines 13-19; column 4, line 63-column 5, line 5; column 5, lines 41-59).

Regarding claim 47, Simpson discloses wherein the card payment instrument account includes at least one of a credit card account, a stored value card account, a debit card account, and a multi-featured credit on a debit card account (column 1, lines 21-25 and 45-53; column 2, lines 29-49).

Regarding claim 48, Simpson discloses wherein the investment account includes at least one of a mutual fund account, a stock account, an individual retirement account, a 401(k) plan account, a savings account, a certificate of deposit account, a money market fund, and an employee stock purchase account (column 1, lines 21-25 and 45-53).

Regarding claim 49, Simpson discloses calculating the monetary reward amount each month as a percentage of net purchases in the card payment instrument account (column 1, lines 54-59; column 2, lines 50-66; column 4, lines 45-57; column 5, lines 25-30).

Regarding claim 50, Simpson discloses transferring the monetary reward amount to the investment account at least once a year (column 1, lines 54-59; column 2, lines 50-66; column 4, lines 45-57; column 5, lines 25-30).

Regarding claim 54, Simpson does not disclose where the alternative destination is an additional account maintained by the cardholder. However, Ogilvie discloses where the alternative destination is an additional account maintained by the cardholder (column 3, lines 1-16 and lines 55-59). Given the combination of Simpson and Ogilvie above, it would be further obvious to modify the rewards being paid to a credit card user as disclosed by Simpson to adapt the rewards being transferred into alternative accounts maintained by the cardholder as disclosed by Ogilvie, the motivation being that the cardholder has earned the rewards and having the flexibility to direct the reward funds into multiple user accounts makes the reward more attractive to the cardholder with more discretion as to where the funds are deposited.

Response to Arguments

Examiner points to the correction of the headings made in the rejection above. In the previous Office Action, it was inadvertently stated that both independent claims were rejected using the same prior art. In fact, claim 44 was not rejected using Norris and this correction to the heading has been made in the present Office Action. The rejection itself, however, was modified only to reflect the newly added claim limitations.

Applicant argues that the references of record fail to disclose the following:

"providing an investment fund card application to an applicant, the investment fund card application for establishment of both a card payment instrument and an investment account, approving the submitted investment fund card application, and establishing the card payment instrument account through the card issuer for the approved cardholder upon approval, wherein the card payment instrument account includes a reward feature available to the cardholder." Applicant argues that the prior art would need to teach a single application for services through two different entities rather than through the same entity, where the card is established with a card issuer and where an investment account is established with a financial institution.

As detailed in the Office Action above, the combination of Simpson and Ogilvie discloses these features. Simpson discloses where the credit card issuer and investment account are held and serviced by two different entities (column 5, lines 60-63). Simpson discloses the simultaneous providing of a credit card application and an investment account application for the opening of a credit card by a credit card issuer and an investment account by a financial institution (column 3, line 65 – column 4, line 4

and column 4 lines 13-17), where the credit card has associated therewith a reward feature to the card holder (column 4, lines 48-57).

Additionally on this point, Feidelson at column 14, lines 34-44 disclose that a single registration form is submitted by which a user is signed up for an investment account and a credit card.

Ogilvie similarly discloses the use of a single application which can be used to open a credit card account and an investment account. While the Principal Bank VISA in this case operates both the credit card account and the investment account, there is no reason that the single application couldn't be used across multiple institutions as disclosed by Simpson and/or Feidelson. Ogilvie discloses in multiple locations that the card issuer and the investment account can be with different entities and does not indicate that multiple applications are being submitted. Rather, Ogilvie indicates that an agreement is in place between the individual and the card issuer and that from there funds can be directed into an investment account (column 6, lines 8-24).

Applicant further argues that none of the references teach a credit card bearing two names, those of the card issuer and the financial institution. Both Simpson and Ogilvie disclose the partnering of a card issuer and a financial institution in offering a rewards program in which consumers can invest funds based on transactions using credit cards. Likewise, Feidelson discloses such a system. Additionally, as presented in the Office Action above, Feidelson also specifically discloses where a co-branded credit card between the administrator and a credit card issuer. It is disclosed at column 5, lines 31-37 and column 6, lines 33-42 that the administrator is a broker/dealer

associated with an investment fund. Therefore, Feidelson discloses a co-branded card between the card issuer and the financial institution (the broker/dealer managing the investment fund). The reference specifically refers to a co-branded credit card such that one of ordinary skill in the art would understand as being the physical card. The reference does not speak to a co-branded program, which might include co-branded advertising but a single-branded card. Rather, the reference specifically calls for a co-branded credit card.

Applicant argues that the prior art fails to disclose creating the investment account in response to the acceptance when the card issuer notifies the financial institution to open an investment account upon approval and establishment of the card payment instrument account. However, examiner points to various sections in Simpson in which an investment account is opened upon approval of the card payment instrument account, and as discussed above, the credit card issuer and financial institution are separate entities maintaining separate and distinct accounts. As noted particularly at column 3, line 50 – column 4, line 5, the credit card account is first created, and then an investment account is created. Given that Simpson discloses that the investment account and credit account may be held or serviced or different entities or the same entity, it would be obvious that if the accounts were managed by different entities, that the credit card account would be created by the credit card issuer and then the investment account would be created by the financial institution managing the investment account, per the steps at column 3, line 50 – column 4, line 5.

Similarly, Feidelson discloses a registration form used to apply for an investment account and a credit card where the credit card is co-branded between the two parties (column 14, lines 38-42). Communication between the credit card issuer and investment account manager occur as part of the co-branding business arrangement. Feidelson specifically discloses the registration form includes the application for a credit card and where the administrator (manager of the investment fund) and credit card issuer have embarked on the joint business venture. In both instances, it is obvious that communication between the parties is occurring in order to create the link between investment accounts and credit card accounts. The references provide the context in which is it obvious that communication between the credit card issuer and investment account holder is occurring for the establishment of the accounts, without action being required of the consumer. The references also provide the context in which the application of known techniques would result in predictable results, namely, the communication between joined business venture partners for the offering of enhanced services for customers.

The Courts have stated that "[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious

unless its actual application is beyond his or her skill." KSR Int'l Co. v. Teleflex, Inc. 127 S. Ct. 1727, 1740, 92 USPQ2d 1385, 1396 (2007).

In the instant case, the cited prior art references were available in the field at the time of the purported invention. The Applicant merely implemented a predictable variation of these existing methods in establishing his/her own invention. Such predicatability is based upon the fact that each incorporated method performs the same function and provides the same utility as originally intended in their pre-combination state.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jennifer Liversedge/

Examiner, Art Unit 3684